

**IN THE DUST DISEASES TRIBUNAL
OF NEW SOUTH WALES**

DDT No.8358 of 2008

BETWEEN: Peter John Jones
Plaintiff

AND: Eraring Energy
First Defendant

AND: Amaca Pty Limited
Second Defendant

AND: Wallaby Grip Limited
Third Defendant

AND: Wallaby Grip [BAE] Pty Limited
Fourth Defendant

AND: Bluescope Steel [AIS] Pty Limited
Fifth Defendant

AND: Orica IS Assets Pty Limited
Sixth Defendant

CONTRIBUTIONS ASSESSMENT DETERMINATION

1. The Registrar of the Dust Diseases Tribunal has referred this matter to me pursuant to clause 49(1) of the Dust Diseases Tribunal Regulations 2007 ("the

Regulations”) for a determination of apportionment as between the Defendants.

2. Regulation 49 of the Regulations provides, so far as is relevant:

“49(4) The contributions assessor to whom a matter is referred is to determine the contribution that each defendant is liable to make and is to make such determination on the assumption that the defendants are liable and solely on the basis of:

- (a) the plaintiff’s statement of particulars and the defendant’s replies to the claim; and
- (b) standard presumptions as to apportionment determined by the Minister for the purposes of this clause by order published in the gazette.”

3. It can be seen from the above that regard can only be had to the statement of particulars provided by the Plaintiff and replies as filed by the Defendants, and not to any other document (including the statement of claim).

4. The Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007 (hereinafter referred to as the Standard Presumptions Order) provides that apportionment is to be in accordance with the table set forth in paragraph 5(1) of the Standard Presumptions Order.

5. Regulation 5 of the Standard Presumption Order provides:

(1) Where defendants, by the requisite time, cannot agree upon an appropriate apportionment between themselves in any one claim, then the apportionment set out in the following Table will apply:

Index	Date of exposure	Standard presumption for each Category of defendants 6	Extent of variation for each Category of defendant
Period A	Before 1 January 1961 7	Category 1: 75 percent Category 2: 25 percent	An increase or decrease by an amount up to 20 percentage points
Period B	Between 1 January 1961 and 31	Category 1: 65 percent Category 2: 35 percent	An increase or decrease by an

	December 1978 ⁸		amount up to 20 percentage points
Period C	Between 1 January 1979 and 31 December 1989 ⁹	Category 1: 60 percent Category 2: 40 percent	An increase or decrease by an amount up to 20 percentage points
Period D	After 1 January 1990	Category 1: 40 percent Category 2: 60 percent	An increase or decrease by an amount up to 30 percentage points

Note:

⁶ The standard presumptions are designed, principally, to take account of the relative state of knowledge that can be attributed to the broad categories of defendants in each period. In Period A, for example, the standard presumption is designed to reflect actual knowledge of the dangers of asbestos for Category 1 defendants and an absence of actual or constructive knowledge for Category 2 defendants. In moving from Period A through to Period D, the standard presumptions are designed to reflect the increasing level of knowledge of Category 2 defendants, to the point that, in Period D, it can be assumed that all defendants (and the community generally) have actual knowledge of the dangers of asbestos.

⁷ This date reflects the established link between asbestos exposure and mesothelioma set out in the article by Wagner & ors in the *British Journal of Industrial Medicine* : see *Bendix Mintex P/L v Barnes*(1997) 42 NSWLR 307 at 329G.

⁸ This date reflects the fact that in 1978, James Hardie & Co Pty Ltd first displayed warnings on their products containing asbestos, and the advice of the Australian National Health & Medical Research Council about reduction of exposure to asbestos to a minimum: see *Bendix* at 331 B-C.

⁹ This date reflects the conclusion of the first calendar year of operation of the DDT, by which time it can be confidently asserted that there was not, or ought not to have been, any knowledge differential within the community.

(2) For the purposes of determining the apportionment, the Contributions Assessor is to determine into which of the two categories each defendant falls (except for any defendant that is to be excluded from the apportionment, as agreed by the defendants). The two categories are:

(a) Category 1 which includes all those corporations, authorities, and legal entities who engage in a business which relates to the period of exposure and which can be described as Miners, Manufacturers, Suppliers and/or Installers ¹⁰ of asbestos or of products, plant and equipment which contained asbestos ¹¹, and

(b) Category 2 which includes all other defendants. These would ordinarily be all corporations, authorities, and legal entities who engage in a business which relates to the period of exposure and which can be described as Users of asbestos or products, plant and equipment which contained asbestos, Occupiers of Premises which contained asbestos or where asbestos or products, plant and equipment which contained asbestos were situated or Employers of staff who in the course of, or as an incident to, their employment were exposed to asbestos.

Note:

¹⁰ It is not intended to include retail shops or outlets within the meaning of the term Supplier in Category 1. Retail shops or outlets are included in Category 2. Similarly, it is not intended to include a user of asbestos products, such as a small building company, which uses bonded asbestos sheeting in building works.

¹¹ For example, the Category of installer would include the designer and manufacturer of particular plant or equipment which included asbestos as part of its design, as well as a company which is engaged to install the plant in accordance with the manufacturer's instructions.

(3) If a defendant, in any particular case, falls within both categories (ie as an installer and employer of the claimant) then a separate share is to be calculated by the Contributions

Assessor for the role of that defendant which falls within each Category.

(4) If there is more than one defendant in either of Category 1 and Category 2, then the Contributions Assessor is to treat each defendant as equal in contribution to the percent share of that Category unless satisfied that a variable contribution ought apply.

(5) The standard presumptions are intended to take account of, and strike an appropriate balance between the two broad categories of defendants having regard to all of those matters set out in clause 3 (Factual considerations). There will be cases where it is appropriate for the Contributions Assessor to vary the standard presumptions within the variation band specified in Column 4 (Extent of variation for each Category of defendant) of the Table to subclause (1). However, a different percentage figure from the standard presumption within the variation band is not to be applied by the Contributions Assessor unless the Contributions Assessor is satisfied that it is appropriate to vary the standard presumptions in the particular circumstances of the individual case. A number may not be determined which falls outside the variation band specified in Column 4 of that Table 12.

Note:

12 For example, a case might arise where the Contributions Assessor considers that the apportionment between an employer and supplier should be adjusted because the employer is considered particularly culpable in this particular instance. The Contributions Assessor could adjust the apportionment in the first index period by up to 20 percentage points, that is from 25 percent to 45 percent, but no higher.

(6) In calculating the appropriate variation, the Contributions Assessor is to have regard to the facts, matters and circumstances which make the case unusual, which may include, but are not limited to, the following facts, matters and circumstances:

(a) the state of actual knowledge of a Category 2 defendant (but not a Category 1 defendant, which is taken to have had actual knowledge at all times),

(b) the identity, capacity, size and state of sophistication of a particular defendant, including the industry, and nature of the industry, in which the defendant was engaged,

(c) the number of defendants identified within each Category as being at fault in connection with the claimant's claim 13,

(d) the steps which the particular defendant took, ought to have taken and/or was capable of taking, to minimise the risks of harm from the manufacture, supply, installation, exposure to and use of asbestos.

Note:

13 For example, if there is more than one Category 1 defendant in periods B or C, and only one Category 2 defendant, the Contributions Assessor might wish to increase the collective share of the Category 1 defendants so that their individual shares are larger than the share of the one Category 2 defendant to reflect their greater culpability, if appropriate.

(7) Where the disease the subject of the claim is an indivisible disease (ie mesothelioma or lung cancer), the apportionment above will apply to the whole of the claim unless the Contributions Assessor is satisfied that by reference to the existence of separate periods of exposure, a differential determination of the contribution of each such exposure period ought be made. If so, a determination will then be made of what proportion to the whole each separate period of exposure bears having regard to the number of such periods, the length of each such period, and the duration of and intensity of exposure to asbestos within each period 14. The standard presumptions will then be applied to each separate period. Where periods of exposure span the index periods specified in the Table to subclause (1), the Contributions Assessor is to adjust the standard presumptions to reflect the changing apportionments in different index periods, unless one of the periods is immaterial 15.

Note:

14 An example of one method of such an apportionment is to be found in *Bitupave Ltd v NSW Associated Blue Metal Quarries Pty Ltd (In Liquidation) & Anor* [1996] NSWDDT 7 (1 November 1996); (1996) 13 NSWCCR 634 .

15 The Contributions Assessor could decide that an index period is so immaterial that it does not warrant any adjustment. For example, where an exposure occurred for equal periods in index period A and index period B, then the Contributions Assessor ordinarily would adjust the standard presumption accordingly. Where, however, only a small part of the exposure occurred in Period B, the Contributions

Assessor might decide to make no adjustment.

(8) Where the disease is a divisible disease (ie asbestosis or pleural disease), the independent Contributions Assessor will first determine (on the basis of the papers) the existence of any separate periods of exposure. A determination will then be made of what proportion to the whole, each separate period of exposure bears having regard to the number of such periods, the length of each such period, and the duration of and intensity of exposure to asbestos within each period 16. The Contributions Assessor is to treat each separate period as equal in contribution to the disease unless satisfied that a variable weighting ought apply. The Contributions Assessor will then apply to each separate period the proportions set out in the table above. Where periods of exposure span the index periods specified in the Table to subclause (1), the Contributions Assessor is to adjust the standard presumptions to reflect the changing apportionments in different index periods, unless one of the periods is immaterial 17.

Note:

16 An example of one method of such an apportionment is to be found in *Bitupave Ltd v NSW Associated Blue Metal Quarries Pty Ltd (In Liquidation) & Anor* [1996] NSWDDT 7 (1 November 1996); (1996) 13 NSWCCR 634 .

17 See note 15.

6. By his Statement of Claim the Plaintiff alleges that
- a. Between about 1949 to about 1955, while employed by J.D. Handley & Co, Electrical Contractors of Sydney, as an apprentice electrician and later as a tradesman electrician, he worked at the Bunnerong Power Station where he was exposed to and inhaled asbestos dust and fibre which was manufactured and/or supplied by Amaca Pty Limited (hereinafter referred to as "Amaca") and Wallaby Grip Limited (hereinafter referred to as "WGL").
 - b. From about 1955 to about 1960 the Plaintiff was employed by Simon Carves Limited as an electrician and for most of this period worked at the Tallawarra Power Station, Pyrmont Power Station and at the premises of Bluescope Steel (AIS) Pty Limited (hereinafter referred to as "AIS") at Port Kembla, and while employed at Tallawarra Power Station, Pyrmont Power Station at AIS, the Plaintiff was exposed to and inhaled asbestos dust and fibre which was manufactured and/or supplied by Amaca Pty Limited and/or WGL.
 - c. At all material times Bunnerong Power Station, Tallawarra Power Station and Pyrmont Power Station were owned, occupied, managed and controlled by Eraring Energy (hereinafter referred to as "Eraring").
 - d. From about 1960 to 1969 the Plaintiff was employed by AES Pty Limited as an electrician and for most of the period of his

employment, the Plaintiff worked at the premises of AIS and while so employed was exposed to asbestos dust and fibre which were manufactured or supplied by Amaca or WGL.

e. From about 1969 to about 1991 the Plaintiff was employed by Orica Assets Pty Limited (hereinafter referred to as "Orica") and during this period of employment the Plaintiff was exposed to and inhaled asbestos dust and fibre manufactured and/or supplied by the Second and Third Defendants.

f. It is alleged that Wallaby Grip (BAE) Pty Limited (hereinafter referred to as "BAE") manufactured insulation products containing asbestos and supplied them to AIS and Orica.

g. The Plaintiff has sustained injury in the nature of asbestos pleural disease, bilateral pleural plaques, bilateral pleural thickening and asbestosis.

7. The Plaintiff's alleged conditions, which are set forth as his injuries are divisible.

8. By his Statement of Particulars the Plaintiff states, relevantly, as follows:

- a. From 1949 to about 1955 he was an apprentice and tradesman electrician employed by J.D. Handley & Co, Electrical Contractors, working as an apprentice at the Sydney Dental Hospital between 1949 and 1951, where he had minimal contact with asbestos, although it did involve drilling a few holes in asbestos containing tiles used on ceilings.
- b. He also worked from 1951 to about 1954 as an electrical mechanic at Bunnerong Power Station involved in the construction of No 23 and No 24 Boilers at Bunnerong Power Station, and on a daily basis worked next to and within a metre or so, or directly underneath, tradesmen, including ladders and pipe fitters who used asbestos insulation in the form of Hardie's 85% magnesia pipe sections, segments and blocks, Hardie's 85% magnesia composition, asbestos tape and rope, to insulate parts of the boilers and associated pipes and vessels connected to the boilers and turbines. The blocks, pipe sections and

segments were a whitish grey colour and very light to hold and came in cardboard boxes labelled "Hardie's 85% magnesia. The 85% magnesia composition was also a greyish white colour, which came in Hessian bags and later in paper bags.

- c. The asbestos rope and tape was grey and whitish and was fibrey and dusty to touch. The rope and tape came in coils and sometimes on wooden spools, depending upon its thickness and diameter. On a daily basis clouds of dust went into the air and floated around the Plaintiff and in the course of the work being performed, in or near to the Plaintiff, he became covered in asbestos dust and inhaled it on a daily basis. The Plaintiff used asbestos rope and tape to insulate electrical cables that needed protection which rope and tape he cut to the required length and it gave off dust and fibres into the air. The Plaintiff asserts that the asbestos rope and tape was a product of Bells Asbestos.
- d. While at Bunnerong the Plaintiff saw inspectors and engineers from the Electricity Commission of New South Wales, co-ordinating and supervising the work of all the tradesmen on the site. The Power Station was otherwise operational. In another job that the Plaintiff performed on Boilers 23 and 24 he installed "thermocouples" and these had to be installed onto pipes connected to each boiler and when installing a thermocouple he had to wrap it in an asbestos blanket to insulate it. When repairing or maintaining a thermocouple the Plaintiff was required to remove the asbestos lagging with his hands, in order to get to it.
- e. The Plaintiff was further exposed to asbestos at Bunnerong Power Station from sharing lunch and change room facilities with many other workers, including ladders and pipe fitters, and that such other persons were covered in asbestos dust and fibre and when they shook their clothes, it settled, on the Plaintiff and into the air.
- f. Additionally, the Plaintiff worked at Tallawarra Power Station from about 1954 to about 1955 during the construction and installation of Nos 1, 2, 3 and 4 Boilers and the work that the Plaintiff would perform was identical to the work he had performed at Bunnerong Power

- Station and he was exposed to asbestos dust and fibre with about the same intensity and regularity as his work at Bunnerong Power Station.
- g. At Tallawarra Power Station the Plaintiff identifies the use of Hardie's K-lite blocks, pipe sections and segments together with asbestos fibre composition in Hessian bags with "Bells Asbestos" name and logo on them. Again, the system of work was identical to that at Bunnerong Power Station, including inspectors and engineers from the Electricity Commission of New South Wales who co-ordinated and supervised the work of all the tradesmen on the site.
 - h. The Plaintiff worked for Simon Carves (Australia) Pty Ltd between 1955 and 1960 at the Tallawarra Power Station, where he continued to perform the same duties as he had previously performed with J.D. Handley & Co, until about 1958. The Plaintiff's work involved primarily the installation of electrical matters and the power station slowly came on line as the Plaintiff worked there.
 - i. After finishing work at Tallawarra in about 1958 the Plaintiff worked on other sites for Simon Carves, including Pymont Power Station, for about three months, Mary Kathleen Uranium mine for about 3 months, Morwell Brickett Plant and Power Station, Victoria for about 12 months, Port Kembla Steel Works for about 6 months, Shell Oil Refinery in Victoria for about 4 months and the Balmain Power Station for about 6 months.
 - j. At each of the sites (with the exception of Balmain Power Station) the Plaintiff was exposed to and inhaled asbestos dust from the same material as he had previously described, doing similar work with the same intensity and regularity as previously described.
 - k. At Brickett the Plaintiff also saw a product called "Hardie's Caposite blocks, used on Boilers, which was a grey coloured fibrey block, which created clouds of dust when used by ladders on the Boilers on which the Plaintiff worked.
 - l. At Tallawarra and Pymont Power Stations the Plaintiff saw inspectors and engineers from the Electricity Commission of New South Wales co-ordinating and supervising the work of all the tradesmen on site.
 - m. At Morwell the Plaintiff saw inspectors and supervisors from the State

Electricity Commission of Victoria co-ordinating and supervising the work of all the tradesmen on site.

- n. While working at AIS for six months, the Plaintiff worked on the No 4 Coke Oven Battery, which was being commissioned. There were ladders always in and around the area applying asbestos slurry and using the materials the Plaintiff previously described and accordingly the Plaintiff was exposed to and inhaled asbestos dust on a daily basis.
- o. Between 1960 and 1967 the Plaintiff was employed by AES Australia Pty Ltd, as an electrician and later contract supervisor. AES Australia was located at Unanderra. During this period the Plaintiff spent 90% of his time working in the Steelworks at Port Kembla (AIS) and the remainder of the time at the premises of Insultech Limited (Orica). At AIS the Plaintiff worked on a number of different areas, the Plaintiff was heavily exposed to asbestos while working in the vicinity of ladders and refractory bricklayers who used asbestos insulation materials, including Hardie's 85% magnesia pipe sections, blocks and composition, Hardie's K-lite insulation blocks, pipe sections and composition, and Bells asbestos rope, tape and fibre composition. The Plaintiff also used asbestos rope and tape to install electrical cable and he did so in the same fashion as previously described. The Plaintiff was exposed on a daily basis to asbestos by working at AIS.
- p. The Plaintiff, in working for Orica, carried out similar work as that carried out at the Steelworks, but was less regular, although as intense as at AIS.
- q. Between 1967 and 1969 the Plaintiff was employed by O'Donnell Griffin, which took over from AES Australia Pty Ltd and in such employment, the Plaintiff continued, until 1969, in the same capacity and in the same premises as he had worked for AES, with about 90% of his work being at AIS and 10% at Orica.
- r. Between 1969 and 1972 Orica, initially working in the Drawing Office, drawing electrical diagrams, employed the Plaintiff and during this period he did not have exposure to asbestos dust and fibre.
- s. Between 1972 and 1974 the Plaintiff worked at Orica's Production Maintenance Department as a supervisor/maintenance engineer, and

this involved working at a shed in Port Kembla, which shed was clad in corrugated asbestos cement sheeting and at times maintenance was performed by builders and carpenters on the walls and the roof of the dispatch shed, and the removal of old asbestos sheeting and replacement with new sheeting, including Super 6. The maintenance or repair work occurred about once or twice a month for a day or so on each of the occasions; and while this was done, the Plaintiff worked around and under the areas, which were being repaired. The dust from the corrugated sheets settled in his hair and on his clothes, and the Plaintiff breathed the dust.

- t. On occasions, a grinder or power saw was used to cut Super 6, and this caused a lot of dust to become airborne and the Plaintiff was within metres of this, while the work was being performed.
- u. There were overhead cranes, which caused the shed to shake and dust which had previously settled, became airborne and the dust was observable.
- v. In late 1974 the Plaintiff was transferred to the No 3 Contact Acid Plant, which contained a "Waste Heap" and was connected to a large number of pipes, which were insulated with asbestos. The pipes had valves which needed replacement and when this occurred, all of the asbestos insulation had to be removed from the valves and when this work took place, the asbestos being removed was crumbly and the dust and fibre went into the air and all over the Plaintiff.
- w. The pipes to the Boiler also had to be re-insulated, and Hardie's 85% magnesia half pipe sections were used, which were cut by hand saw, applied to the pipes and covered with asbestos insulation composition, which was also Hardie's 85% magnesia. Asbestos rope was used to insulate small-bore steam pipes and to pack valves and flanges.
- x. In addition, there was a converter within the area and the converter was completely covered in asbestos and zincaneel cladding. The Plaintiff regularly had to remove the cladding and the asbestos insulation in order to repair the converter shell. The asbestos insulation was mainly in the form of prefabricated pipe sections; however, asbestos slurry was used for irregular shaped sections of the shell and its components.

Once the repair work had been completed, the asbestos insulation and cladding was replaced. Ladders applied this insulation; however, the Plaintiff worked within a metre or so of the work being performed. The recommissioning of the Contact Acid Plant took approximately 6 months and during this time the Plaintiff was exposed to, and inhaled, asbestos on a daily basis.

- y. Once it was recommissioned, the Plaintiff was in charge of maintaining the Plant for about three (3) years and during this period; the Plaintiff had regular exposure to asbestos insulation during its removal and re-application when repair work was required.
- z. In about 1979 the Plaintiff was promoted to Works Engineer, and he worked in this position until about 1992; however, during this period his exposure to asbestos dust diminished drastically.
- aa. The Plaintiff asserts that about 95% of his exposure to asbestos occurred between 1949 and 1979.

9. Eraring provided a reply on 17 March 2009, and asserts:

- a. That the claim against it relates to the Bunnerong, Tallawarra and Pymont Power Stations;
- b. Given the Plaintiff's alleged employment as an electrician, his exposure would have been limited in its intensity and duration;
- c. That Eraring should be placed in Category 2;
- d. Amaca should be placed in Category 1;
- e. WGL should be placed in Category 1;
- f. Wallaby Grip BAE should be placed in Category 1.
- g. Bluescope should be placed in Category 2.
- h. Orica should be placed in Category 2.
- i. That Eraring only had constructive knowledge, before 31 December 1969, and only had limited actual knowledge as to the dangers of blue asbestos from 1 January 1970. It had actual knowledge of the dangers of asbestos from 25 November 1974.
- j. That the standard presumption should not be varied, as against it.
- k. That the standard presumption should be varied as against Amaca.

- I. That there are six periods of exposure, namely:
- Period 1 – employment with J.D. Handley & Co at Bunnerong, Tallawarra, Power Stations = 4 years or 15.5%
 - Period 2 – employment with Simon Carves at Tallawarra and Pymont = 2.25 years, or 8.72%
 - Period 3 – employment with Simon Carves at AIS = 6 months or 1.94%
 - Period 4 - employment with Simon Carves at other locations = 1.75 years or 6.79%
 - Period 5 - employment with AES at premises of AIS = 7 years or 27.14%
 - Period 6 - employment with O'Donnell Griffin at premises of Bluescope for 90% of period and premises of Orica for 10% of period = 2 years, or 7.76%
 - Period 7 - employment with Orica, at its premises = 7 years or 27.14%
 - Period 8 - employment with Orica, at its premises = 1979 to 1992 = 13 years, but this accounts for only 5% of overall exposure.
 - Thus, so far as Eraring is concerned, it asserts being involved with only 24.22% of the periods of exposure and that Periods 1 and 2 fall within period A of the Standard Presumption.
 - During Periods 1 and 2, Eraring would be responsible for 6.055%, Amaca for 9.85% and WGL for 9.085%, with the balance of 75.78% being in respect of parties other than Eraring.

10. WGL and BAE provide a joint Reply.

11. For the purposes of this case, it is apparent that WGL and BAE should be treated as one entity, given the chronological fact that they were not operational at the same time. Accordingly, the Reply of WGL and BAE will be referred to simply as "the Reply of WGL", which asserts:

- a. WGL denied that it manufactured 85% magnesia pipe sections,

- segments, blocks or composition, K-lite block sections, segments or composition, Caposite blocks, Super 6 roof sheeting.
- b. WGL admits that between 1949 and 31 December 1979, it was one of a number of manufacturers or suppliers of asbestos rope, tape, composition and blankets; and during the same period was one of a number of suppliers of Amaca's 85% magnesia, K-lite and Caposite range of pipe sections, segments, blocks and composition.
 - c. WGL acquired actual knowledge of the dangers of the use of asbestos in the mid-70s and thereafter provided warnings.
 - d. Eraring should be placed in Category 2; Amaca should be placed in Category 1; WGL should be placed in Category 1; AIS should be placed in category 1; Orica should be placed in Category 2.
 - e. That as against Orica, the central presumption should be varied to a maximum of 20 percentage points.
 - f. That if AIS is not placed in Category 1, but in Category 2, the standard presumption should be varied to the maximum of 20 percentage points as against AIS.
12. AIS has provided a Reply, on 20 April 2009, and asserts the following:
- a. That the Plaintiff could not have worked on the No 4 Coke Oven Battery in the period 1955 to 1960, because that Oven was not commissioned until 1966.
 - b. It disputes certain periods of employment.
 - c. That Eraring should be placed in Category 2.
 - d. Amaca should be placed in Category 1.
 - e. WGL should be placed in Category 1.
 - f. AIS should be placed in Category 2.
 - g. Orica should be placed in Category 2.
 - h. That AIS is simply joined to the proceedings as an occupier, whereas the assertions by other defendants, as to AIS being a Category 1 employer or based upon findings that AIS was an employer.
 - i. That the Plaintiff's assertion of a six month period between 1955 and 1960, should be excluded because of the half-yearly Report of May

1964.

- j. That Orica's time on risk should be weighted higher, to account for the greater knowledge.
- k. That the broad brush approach would result in an apportionment of liability, as against, in the following way:

Period of employment with Eraring	60%
Period of employment with AIS	20%
Period of employment with Orica	10%
Period of exposure, to which liability does not attach	10%

- l. There should be no variation on the standard presumptions as regards AIS and its suppliers, Amaca and WGL; with Amaca, WGL being apportioned 65% of AIS' liability,
 - m. That in respect of AIS' 20% apportionment of liability, it should be divided as to Amaca – 6.5%; WGL – 6.5%; AIS – 7% - totalling 20%.
13. Orica has provided a Reply filed on 17 March 2009, which asserts the following:
- a. That except for certain periods, Orica disputes the period of employment.
 - b. That Eraring should be placed in Category 2, Amaca in Category 1, WGL in Category 1, AIS in Category 2, and Orica in Category 2.
 - c. The standard presumptions should not be varied.
14. Initially, the Contributions Assessor must determine the existence of any separate periods of exposure pursuant to clause 5(8) and make a determination of what proportion of the whole each separate period bears having regard to the number of such periods, the length of each period, the duration of and the intensity of exposure to asbestos present in each such period. In reaching the conclusions set forth below, I have taken into account

the periods of exposure and the severity of the exposure during each of the periods.

15. On the information before me I have reached the following factual conclusions:

- i. Between 1951 and 1954 (Period 1) the Plaintiff worked with Eraring, and this period represents 11% of his total exposure. During this period asbestos was supplied by Amaca and WGL in the proportion of 70/30 respectively;
- ii. Between 1954 and 1955 (Period 2) the Plaintiff worked with Eraring, and this period represents 7.6% of his total exposure. During this period asbestos was supplied by Amaca and WGL in the proportion of 70/30 respectively;
- iii. Between 1955 and 1958 (Period 3) the Plaintiff worked with Eraring, and this period represents 11% of his total exposure. During this period asbestos was supplied by Amaca and WGL in the proportion of 70/30 respectively;
- iv. Between 1958 and 1960 (Period 4) the Plaintiff worked with Eraring for 3 months, and this period represents 2.85% of his total exposure. During this period asbestos was supplied by Amaca and WGL in the proportion of 70/30 respectively;
- v. Between 1958 and 1960 (Period 5) the Plaintiff worked at various places, and this period represents 7.6% of his total exposure. I have accepted the submissions of AIS and have not included 6 months at AIS. During this period asbestos was supplied by Amaca and WGL in the proportion of 70/30 respectively;
- vi. Between 1961 and 1969 (Period 6) the Plaintiff worked at AIS for 90% of the time and with Orica for 10%, and this period represents 26.5% of his total exposure. During this period asbestos was supplied by Amaca and WGL in the proportion of 70/30 respectively;
- vii. Between 1972 and 1974 (Period 7) and the Plaintiff worked with Orica, and this period represents 10.45% of his total exposure. During this period asbestos was supplied by Amaca;

- viii. Between 1974 and 1979 (Period 8) the Plaintiff worked with Orica, and this period represents 18% of his total exposure. During this period asbestos was supplied by Amaca;
- ix. Between 1979 and 1990 (Period 9) the Plaintiff worked with Orica, and this period represents 3% of his total exposure. During this period asbestos was supplied by Amaca;
- x. Between 1990 and 1992 (Period 10) the Plaintiff worked with Orica, and this period represents 2% of his total exposure. During this period asbestos was supplied by Amaca;
- xi. The periods identified above, cover all of the periods when the Plaintiff was exposed to asbestos dust and fibre.

- 16. I determine that the Eraring, Bluescope, and Orica each fall into Category 2. I determine that Amaca, and WGL each fall into Category 1.
- 17. The question then arises as to the contribution between Category 1 and Category 2 defendants, which is, according to the Standard Presumptions Order, to be respectively on the basis of 75%/25% until 31.12.1960, 65%/35% until 31.12.1978, 60%/40% until 31.12.1989 and 40%/60% from 1.1.1990.
- 18. In the present case, the standard presumptions take into account the various aspects of the liability each of the Defendants and, accordingly, there should be no variation in the standard presumptions.
- 19. Therefore, I determine the total liability of the Defendants as follows:

Eraring	8.2%
Amaca	55.5%
Wallaby Grip	14.7%
AIS	8.3%
Orica	13.3%
Total	100%

20. Pursuant to clause 61 of the Regulations, I appoint the Amaca as the Single Claims Manager as it is the primary Defendant defined under clause 61(9).

J.L. Sharpe



June 2, 2009